

Arguments Against Requiring Mandatory Estimates in Conservator Petitions

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1. The only issues raised in a petition for appointment of a conservator are: (a) whether the subject person needs a conservator, and (b) if so, who ought to be the conservator. The proposed estimates are completely irrelevant to the first of these issues (the need for the appointment of a guardian or conservator) and, in most cases, will be irrelevant to the second issue.
2. Most of the required estimated items will not change regardless of who is appointed as the conservator and, in fact, will not change (be different) regardless of whether a conservator is or is not appointed. For example, the monthly cost of the subject person's housing and care is the same regardless of whether the protected is under a conservatorship.
3. The real issue that the estimates appear to be focused on is the amount of conservator fees and, possibly, attorney fees. Thus, if estimates are to be required, they should only be required for conservators and attorneys who intend to charge the protected person's estate for their services. However, in large part, this has already been addressed by SB1499, which has added A.R.S. § 14-5109. That statute will require any guardian, conservator, attorney, or guardian ad litem who intends to seek compensation from the estate of a ward or protected person to give written notice of the basis for such compensation when the guardian, conservator, attorney, or guardian ad litem first appears in the case and to also update the notice at least 30 days prior to changing the basis of compensation.
4. In the vast majority of conservatorship cases, a family member is appointed as the protected person's conservator and does not charge a fee for services. Thus, the estimate requirement, as currently being proposed, will impose an undue burden in the vast majority of cases.
5. As a result of HIPPA and financial privacy laws, prior to the appointment of a conservator, neither the petition nor the prospective conservator will have lawful access to much of the information needed to provide reliable estimates. Consequently, in most cases, the petitioner will be unable to provide the required estimates.
6. Due to the lack of available information, petitioners will be inclined to provide "guesstimates" rather than acknowledging they have no reliable basis to project prospective costs. Interested persons and the court then will have an unrealistic expectation that the petitioner's "guesstimates" are an accurate projection of the prospective costs. This likely will lead to litigation against the conservator when the actual costs end up bearing no resemblance to the estimate (even though the conservator might not have been the petitioner and, thus, might not have been the one who provided the estimates).

7. The court likely will end up relying on the estimates (which are most likely very inaccurate) to enter financial orders that imposes unwarranted restrictions on the conservator's powers. The conservatorship estate then will bear additional (and otherwise unnecessary) expense when the conservator is required to later ask the court to amend the financial order after the true circumstances of the conservatorship estate become known.
8. To the extent a petitioner has access to confidential information about the subject person when the petition is filed, such information will be disclosed in the petition even though the subject person has not been found to be incapacitated, thereby compromising the privacy rights of the subject person.
9. No process is provided for the petitioner (or conservator) to provide post-appointment updates to the estimates if the petitioner (or conservator) subsequently discovers that the original projections were substantially inaccurate.
10. Lay persons (specifically family members) often are already intimidated by the conservatorship process. Requiring the proposed estimates will further intimidate them and, possibly, might result in them looking to non-court alternatives, such as powers of attorney even though such alternatives might not be in the subject person's best interest or legal (e.g., having the subject person sign a power of attorney when the subject person does not have capacity to sign the power of attorney).
11. Prior to filing the petition, the petitioner will have no ability whatsoever to estimate the fees of the court-appointed attorney because the hourly rates of court-appointed attorneys vary greatly and the court-appointed attorney is appointed after the petition is filed.
12. Requiring the estimates will unnecessarily increase costs, especially because in most cases the estimates will need to be updated prior to the initial hearing.
13. The court and parties can request the estimated information from the petitioner or the proposed conservator at the time of the initial (or subsequent) hearing on the petition. If the matter is contested, the information can (and should) be obtained during the discovery phase, especially when the issue in dispute is whom should be appointed as the conservator.
14. The proposed budgets, which will be provided by the conservator no more than 90 days after appointment, will provide, in a more cost-effective manner, much more meaningful information to the court and interested persons than the proposed estimates, the costs of which will exceed the benefit.